

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GABRIEL MCDANIELS,

Plaintiff,

v.

THOMAS ROSCH,

Defendant.

Case No. [18-cv-06273-MMC](#)

**ORDER STRIKING AMENDED  
COMPLAINT**

Re: Dkt. No. 10

On October 12, 2018, plaintiff Gabriel McDaniels filed a complaint, by which pleading plaintiff asserted a claim for “trespass(forgery)” against defendant Thomas Rosch. By order filed November 16, 2018 (“November 16 Order”), the Court adopted Magistrate Judge Sallie Kim’s recommendation, dismissed the complaint for lack of subject matter jurisdiction, and afforded plaintiff leave to amend to plead facts as to the nature of the conduct comprising the alleged wrong. (See Doc. No. 7 (Order); see also Doc. No. 4 (Report and Recommendation to Dismiss).) By the same order, plaintiff was advised that if he wished to file an amended complaint, such pleading had to be filed no later than December 7, 2018. Thereafter, by order filed December 13, 2018, the Court dismissed the above-titled action without prejudice, as no amended complaint had been filed by the deadline set forth in the November 16 Order.

On January 10, 2019, more than a month after the deadline to file an amended complaint had passed, plaintiff filed a document titled “First Amended Claim,” whereby plaintiff explains his unfamiliarity with the law, and attaches a document titled “First Amended Claim Response,” in which plaintiff states “[t]he trespass that was committed against me from the wrongdoer was” and proceeds to quote, in full, 18 U.S.C. § 242 (see

1 Doc. No. 10 at 3). The Court construes the above-referenced documents as plaintiff's  
2 amended complaint.


3 At the outset, as noted above, the above-titled action has been dismissed, and,  
4 consequently, there presently is no case in which the amended complaint can be filed.

5 Moreover, the amended complaint continues to lack any factual allegations,  
6 providing no means by which a determination can be made as to whether plaintiff's  
7 "trespass(forgery)" claim comes within the jurisdiction of the federal courts. See 28  
8 U.S.C. §§ 1331-1332.<sup>1</sup>

9 Accordingly, the amended complaint is hereby STRICKEN, without prejudice to  
10 plaintiff's refiling his claim in state court.

11 **IT IS SO ORDERED.**

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13 Dated: January 31, 2019

  
MAXINE M. CHESNEY  
United States District Judge

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<sup>1</sup> The Court also notes that, irrespective of the facts underlying plaintiff's claim, the  
28 above-referenced statute cited by plaintiff, 18 U.S.C. § 242, is a criminal law and does  
not provide for a private right of action.